

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**MARCIABROWN and
JAMES WILLIAMS,
Plaintiffs,**

v.

**OFFICER LIAM MCELWEE,
OFFICER BRIAN EVANS,
OFFICER J. KEITH,
OFFICER CUDDHY,
OFFICER STEVEN ZIVIELLO,
UNKNOWN POLICE OFFICERS,
ALDAN BOROUGH, and
DARBY BOROUGH,
Defendants.**

CIVIL ACTION

NO. 12-3547

ORDER

AND NOW, this 6th day of November, 2013, upon consideration of Defendants, Officer Steven Ziviello and Aldan Borough's Motion to Dismiss, Plaintiffs' Second Amended Complaint (Document Number 21, filed July 10, 2013), Motion for Partial Dismissal Under Federal Rule of Civil Procedure 12(b)(6) and Motion to Strike Pursuant to Federal Rule of Civil Procedure 12(f) of Defendants, Liam McElwee, Brian Evans, J. Keith, Officer Cuddhy and Darby Borough (Document No. 24, filed July 15, 2013), Plaintiffs Answer, to Defendants' Motion to Dismiss Plaintiffs' Second Amended Complaint Under Federal Rule of Civil Procedure 12(b)(6) (Document No. 25, August 7, 2013), and Defendants, Officer Steven Ziviello and Aldan Borough's Reply to Plaintiffs' response to Motion to Dismiss Plaintiffs' Second Amended Complaint (Document No. 26, filed August 21, 2013), for the reasons set forth in the attached Memorandum dated November 6, 2013, **IT IS ORDERED** as follows:

1. Defendants, Officer Steven Ziviello and Aldan Borough's Motion to Dismiss, Plaintiffs' Second Amended Complaint (Document Number 21, filed July 10, 2013) is **GRANTED**, and all claims against Steven Ziviello and Aldan Borough are **DISMISSED WITH PREJUDICE**.

2. Motion for Partial Dismissal Under Federal Rule of Civil Procedure 12(b)(6) and Motion to Strike Pursuant to Federal Rule of Civil Procedure 12(f) of Defendants, Liam McElwee, Brian Evans, J. Keith, Officer Cuddhy and Darby Borough (Document No. 24, filed July 15, 2013) is

GRANTED IN PART AND DENIED IN PART as follows:

- a. That part of defendants' Motion seeking dismissal of Count I, the malicious-prosecution claim included in Count II, the equal-protection claim included in Count III, and Count IV, is **GRANTED WITH PREJUDICE**.
- b. That part of defendants' Motion requesting that the Court strike the remaining claims in Count III is **GRANTED**.
- c. That part of defendants' Motion seeking dismissal of Count V is **DENIED**. The Court construes plaintiffs' allegations in Count V as tort-law claims rather than claims brought under the Pennsylvania Constitution.

IT IS FURTHER ORDERED that the caption of the case is amended to **DELETE** reference to all defendants excepting Officers Liam McElwee, Brian Evans, J. Keith, and Cuddhy.

BY THE COURT:

/s/ Jan E. DuBois
DuBOIS, JAN E., J.